

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

The J. Edward Kloian Foundation,

Plaintiff,

v.

Case No. 13-13684

Fred S. Findling, *et al.*,

Sean F. Cox

United States District Court Judge

Defendants.

ORDER DENYING WITHOUT PREJUDICE
MOTION FOR EX-PARTE TEMPORARY RESTRAINING ORDER

On August 28, 2013, Plaintiff filed this action against the following Defendants: 1) Fred S. Findling; 2) the Findling Law Firm, PLC; 3) the Honorable David S. Swartz, the Chief Judge Pro Tem of the Washtenaw County Trial Court in Ann Arbor, Michigan; 4) Victor Lotycz, identified as the owner and operator of Tri-County Court Services, Incorporated; 5) and Tri-County Court Services, Incorporated. Plaintiff's complaint asserts the following claims: 1) "First Cause of Action (Violation of the Fourteenth Amendment Due Process Clause)"; 2) "Second Cause of Action (Violation of Supremacy Clause)"; and 3) "Third Cause of Action (Conversion of The Foundations Property)."

On August 28, 2013, Plaintiff also filed an "Emergency Motion for Ex-Parte Temporary Restraining Order." (Docket Entry No. 2). In that motion, Plaintiff asks this Court to issue an ex-parte temporary restraining order preventing a sale of property ordered in a state court action. Plaintiff's motion asserts that Plaintiff received notice of the sale at issue the day prior to the scheduled sale and therefore providing notice to Defendants of the pending motion seeking to

prevent that sale would be “futile.” (Pl.’s Motion at 4). Among the Defendants, however, is the state-court judge who ordered the sale at issue, who is presumably as accessible as this Court on an emergency matter. Nevertheless, it appears that Plaintiff made no attempt to contact that Defendant, or any other Defendant named in this action.

In addition, although the motion asserts that the sale was to take place on August 28, 2013, Counsel for Plaintiff later contacted this Court’s chambers and advised that the sale had been adjourned until the following week. As such, this is no longer an emergency situation that requires this Court hearing the motion without notice to Defendants.

Moreover, after an initial review of Plaintiff’s Complaint, this Court has concerns that Plaintiff’s claims may be barred in whole or in part by the *Rooker-Feldman* doctrine and/or that claims against certain Defendants fail for other reasons, such as absolute judicial immunity. *See Musilli v. Googasian*, 2006 WL 3030974 (E.D. Mich. 2006). These concerns further militate in favor of denying the pending motion.

Accordingly, the Court hereby ORDERS that Plaintiff’s Emergency Motion for Ex-Parte Temporary Restraining Order is DENIED WITHOUT PREJUDICE. If Plaintiff wishes to pursue a temporary restraining order or a preliminary injunction in this case, it must provide Defendants with notice of same.

IT IS FURTHER ORDERED that the Status Conference previously scheduled for September 3, 2013, is ADJOURNED WITHOUT DATE.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: August 30, 2013

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record
on August 30, 2013, by electronic and/or ordinary mail.

S/Jennifer McCoy

Case Manager